

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

NANCY ANDERSON

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Plaintiff,

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v.

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BRITE DENTAL CORPORATION d/b/a
CREATIVE DENTAL CARE, a Florida
Corporation; MOUHANNAD BUDEIR,
D.D.S.; FARDIN ZARE, D.D.S.,
THEODORE KELTS, D.D.S.; and
MERCK & CO., INC.,

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Case No. 8:07-cv-00965-JDW-EAJ

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Defendants.

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**DEFENDANT MERCK & CO., INC.'S OPPOSITION TO
PLAINTIFF'S MOTION FOR RECONSIDERATION AND
MOTION FOR CONSIDERATION OF UNTIMELY RESPONSE**

Defendant Merck & Co., Inc. ("Merck"), by its undersigned counsel, hereby files this memorandum in opposition to Plaintiff's Motion for Reconsideration and Motion for Consideration of Untimely Response, in which the Plaintiff seeks to reargue this Court's decision to stay this case while the Judicial Panel on Multidistrict Litigation ("MDL Panel") determines whether to transfer this case to the FOSAMAX® ("Fosamax") multi-district litigation pending in the Southern District of New York ("the Fosamax MDL proceedings"). The Plaintiff presents no argument that could not have been presented in a timely filed opposition, and the Court properly stayed this case while the MDL panel performs its statutory duty to decide whether this case should be transferred. For these reasons, the Plaintiff's Motions should be denied.

Merck filed its Motion to Stay in this Court on June 13, 2007. On June 18, 2007, the MDL Panel issued a Conditional Transfer Order, providing for the transfer of this case to the Fosamax MDL proceedings. *See* Exhibit A hereto. The Plaintiff did not file in this Court any timely opposition to the Motion to Stay, but instead the Plaintiff gave the MDL Panel notice on July 5, 2007 that she intended to oppose transfer. *See* Exhibit B hereto. On July 6, 2007, more than a week after the Plaintiff's opposition on the Motion to Stay had been due, this Court stayed this case until the MDL Panel determines whether it should be transferred. On July 17, 2007, the Plaintiff filed a brief before the MDL Panel, setting forth her arguments before that Panel as to where this case should most efficiently proceed.

In Merck's Motion to Stay and in Section I of Merck's Opposition to the Plaintiff's Motion to Remand, Merck set out in detail the reasons why it is appropriate to stay this case while the MDL Panel performs its duties under 28 U.S.C. § 1407, which requires the MDL Panel to decide whether it would be most efficient for this case to proceed in this Court or in the Fosamax MDL proceedings. The Plaintiff's arguments based upon judicial economy properly should be presented to the MDL Panel, and the Plaintiff has already filed a brief on those issues with the Panel. The MDL Panel, therefore, will determine where this case is most efficiently addressed, and it was wholly appropriate for the Court to stay this case while the MDL Panel makes its decision. For these reasons, and those stated in Merck's Motion to Stay and Opposition to Plaintiff's Motion to Remand, the Plaintiff's Motion for Reconsideration and Motion for Consideration of Untimely Response should be denied.

Respectfully submitted,

/s/ Larry Hill

LARRY HILL

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Attorneys for Merck & Co., Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by electronic delivery pursuant to Fed. R. Civ. P. 5(b)(2)(D) to James A. Wardell, WARDELL & QUEZON, P.A., 805 West Azeele Street, Tampa, FL 33606, and Thomas Saieva, 601 West Swann Avenue, Suite B, Tampa, FL 33606 and by U.S. Mail to James D. Wetzel, STEPHENS, LYNN, ET AL., 101 East Kennedy Boulevard, Suite 2500, Tampa FL 33602 and Mouhannad Budeir, DDS, 5046 Mission Square Circle, Zephyrhills FL 33542 this 19th day of July, 2007.

/s/ Larry Hill
LARRY HILL